## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION

LARRY CRIBB and CAROLYN CRIBB,	)
Plaintiffs,	) ) ) CIVIL ACTION NO. 4:09-cv-00141-FL
V.	(Removed from the General Court of Justice Superior Court Division, Carteret County, North
SULZER METCO (US) INC., and THE	Carolina, Case No. 09 CVS 1018)
PERKIN-ELMER CORPORATION, and	)
APPLERA CORPORATION,	)
	)
Defendants.	)
	_ )

# MOTION OF DEFENDANTS THE PERKIN-ELMER CORPORATION AND APPLERA CORPORATION TO DISMISS PLAINTIFFS' STRICT LIABILITY CLAIM FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Pursuant to Fed. R. Civ. P. 12(b)(6), and subject to and without waiving the jurisdictional defenses presented in their answer to the plaintiffs' complaint, defendants The Perkin-Elmer Corporation and Applera Corporation, improperly named as defendants, respectfully move this Court to dismiss with prejudice plaintiffs' second claim for relief for failure to state a claim upon which relief can be granted. The second claim for relief alleges a claim for strict liability, and as a matter of law such claim is fatally defective. This motion is accompanied by a contemporaneously-filed memorandum in support of the motion.

WHEREFORE The Perkin-Elmer Corporation and Applera Corporation respectfully pray that their Motion be inquired into and granted and that plaintiffs' second claim for relief be dismissed in its entirety.

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#### YATES, MCLAMB & WEYHER, L.L.P.

By: /s/ Barbara B. Weyher

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Defendants.	) )
	- /

# **CERTIFICATE OF SERVICE**

I hereby certify that on August 19, 2009, I electronically filed the foregoing MOTION OF DEFENDANTS THE PERKIN-ELMER CORPORATION AND APPLERA CORPORATION TO DISMISS PLAINTIFFS' STRICT LIABILITY CLAIM FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED with the Clerk of the Court using the CM/ECF System which will automatically send a copy of same to the following counsel of record: David Neal Allen, J. Arthur Mozley, Kristen M. Kelly and I hereby certify that I have mailed the document to the following non CM/ECF participants:

John Alan Jones 410 Glenwood Avenue, Suite 200 Raleigh, North Carolina 27603 Doug Jones Doug Jones & Associates, P.A. 3115 Trent Road New Bern, North Carolina 28562

YATES, MCLAMB & WEYHER, L.L.P.

By: /s/ Barbara B. Weyher
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